IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.50 of 2004

Date of decision 15.6.2007

Executive Engineer, HP PWD,
Haripurdhar and others Petitioners

Vs.

Vipta Nand Respondent

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioners: Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan and Ms.Meenakshi Sharma, Deputy Advocate Generals.

For the Respondent : Mr.Neel Kamal Sood with Mr.R.R.Rahi, Advocates.

Rajiv Sharma, J.

This petition is directed against the award passed by H.P. Labour Court, Shimla on 15.7.2003 in Reference No.240 of 2002.

The brief facts necessary for the adjudication of this petition are that the reference was made by the State Government to the Labour Court to the following effect:

> "Whether the termination of services of Sh.Vipta Nand, workman son of Sh.Salig Ram by the employer, i.e. the Executive Engineer, HP PWD Division, Sangrah, District Sirmaur, H.P. w.e.f. December,1995, without complying the provisions of Section 25-N of the Industrial Disputes Act, 1947 is fair and justified? If not, what relief of service benefits including seniority and back wages the workman Sh.Vipta Nand is entitled to?

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[1] Whether reporter of local papers are allowed to see the judgment ? No..

In sequel to Reference No.240 of 2002 the workman had filed a statement of claim before the labour Court stating therein that he was appointed as daily rated Mate in the year 1982 and was retrenched on 30.12.1995 without following the mandatory provision of Sections 25-F,G and H of the Industrial Disputes Act, 1947. The workman had also annexed with the statement of claim the details of the workmen who were junior to him, but retained while retrenching him. The employer was proceeded ex parte on 20.3.2003. The workman had appeared as PW-1 and has stated that he had joined the duties as Mate in the year 1982 in Sub Division Nauradhar and was retrenched on 30.12.1995 and his juniors, namely, Chet Ram and Dalip Singh were retained and even fresh recruitment was made by the employer. He had also annexed copy of the man days chart Ex.PW-1/A, giving therein the details of the period he was engaged.

Mr.M.S.Chandel, learned Advocate General had submitted that the reference was not maintainable. He had also stated that the workman had contested election for the post of Pradhan and was elected President with effect from 5.1.1996 to 1.1.1999 and it was a case of abandonment. Mr.Neel Kamal Sood, learned counsel for the respondent, has supported the award dated 15.7.2003.

I have heard the learned counsel for the parties and have gone through the record of the case.

The workman had remained in the employment with effect from 1982 to 30.12.1995 and on basis of his statement and man days chart i.e. Ex.PW1/A he had completed 240 days preceding his retrenchment effected on 30.12.1995. The workman had also given the names of the workmen who were juniors to him but retained by the employer while retrenching him on 30.12.1995. It is thus evident that the retrenchment of

the petitioner had been effected in violation of Section 25-F as well as Section 25 G of the Industrial Disputes Act, 1947 by retaining the juniors and violating the principle of last come first go. The plea of abandonment is a question of fact and is required to be proved. The employer State has not placed any material on record that the respondent workman had abandoned the post except one communication Annexure P-3 placed for the first time with this petition. Since this document has not been placed on record before the Labour Court the same cannot be looked into by this Court. As far as the plea of delay is concerned the retrenchment was effected in the year 1995 and thereafter the workman had approached the Conciliation Officer and on the basis of the failure report submitted by him the reference was made in the year 2002. The aspect of delay has also been taken into consideration by the Labour Court by not awarding back wages to him. There is neither any jurisdictional error nor procedural irregularity in the Award dated 15.7.2003 passed by the Labour Court. Accordingly the writ petition is dismissed with no order as to costs. The interim order granted on 1.4.2004 which was confirmed on 30.7.2004 shall stand vacated.

June 15,2007 (g) **(Rajiv Sharma), J.**